

Message Text

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ACTION EUR-12

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C O N F I D E N T I A L BONN 08271

E.O. 11652: XGDS 1
TAGS: PORS, PGOV, BQG, AKB
SUBJECT: PRESENCE OF BGS IN BERLIN: UTILITY OF LEGAL
STUDY ON SUBJECT

REFS: (A) USBER 997
(B) BONN 6162

1. WE ARE GRATEFUL FOR USBER'S USEFUL REPORT (REF A)
ON THE BUNDESGRENZSCHUETZ (FEDERAL BORDER POLICE; BGS)
AND APPRECIATE THE FACT THAT A LEGAL STUDY ON THE BGS
WOULD BE AN ADDED BURDEN TO THE MISSIONS IN BERLIN. OUR
REASON FOR SUGGESTING SUCH A STUDY IS THE FCO'S LEGAL
ARGUMENT THAT THE WHOLESAL USE OF THE CRACK ANTI-
TERRORIST UNIT GSG-9, OF THE BGS, WOULD BE A
"FLAGRANT VIOLATION" OF THE DEMILITARIZED STATUS OF
BERLIN (REF B). WHILE WE REALIZE THAT THE ALLIES MIGHT,
FOR POLITICAL REASONS, CONTINUE TO REFUSE TO ALLOW THE
BGS AS BGS IN BERLIN, WE QUESTION WHETHER IT IS CORRECT
TO FIND THAT THE PRESENCE OF GSG-9 WOULD BE ILLEGAL UNDER
ALL CIRCUMSTANCES. IN THAT CONNECTION, WE AGREE WITH
THE DISTINCTION MADE BY USBER BETWEEN THE LEGAL AND
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POLITICAL ASPECTS OF THE PROBLEM (PARA 4, REF A).

2. SINCE THE FCO APPEARS FIRMLY OPPOSED TO THE USE OF
GSG-9 UNDER ANY CIRCUMSTANCES, EXCEPT WITH SOVIET CONSENT,
AND SINCE THE FCO ARGUMENTS ARE COUCHED IN LEGAL TERMS,
IT APPEARS TO US THAT ONLY A LEGAL STUDY CAN OVERCOME
THE FCO OBJECTIONS. WE DO NOT BELIEVE IT WILL BE

POSSIBLE, IN VIEW OF THE FCO'S INSTRUCTIONS, TO PERSUADE THE UK REP TO THE BONN GROUP THAT THE ALLIED BONN GROUP REPS SHOULD DEVELOP A FEASIBLE METHOD TO PERMIT THE ALLIES IN BERLIN TO CALL ON THE BGS IF NECESSARY IN AN EMERGENCY (PARA 8 OF REF A). HIS RESPONSE TO SUCH A SUGGESTION WOULD BE THAT HIS INSTRUCTIONS ARE CLEAR.

3. ON THE OTHER HAND, WE BELIEVE WE WOULD HAVE MORE SUCCESS IN PERSUADING THE BRITISH TO AGREE THAT A PROPER LEGAL STUDY SHOULD BE UNDERTAKEN, ON THE GROUND THAT WE HAVE ADOPTED BUT NOT TESTED THE WORKING ASSUMPTION THAT THE BGS IS A MILITARY (OR PARAMILITARY) ORGANIZATION. THE INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES TERMS THE BGS A PARAMILITARY FORCE, SO WE TRUST THIS ASSUMPTION IS CORRECT AND THE LEGAL STUDY WILL PROBABLY CONFIRM THIS WITHOUT A GREAT DEAL OF TIME BEING SPENT. EVEN IF THIS IS THE CASE, HOWEVER, WE WOULD NOTE THAT THE STUDY SHOULD CONCENTRATE ON DETERMINING WHETHER THERE ARE ALTERNATIVE WAYS WHICH WOULD PERMIT THE LEGAL USE OF GSG-9 IN BERLIN. WE WOULD MAKE CLEAR THAT WE ARE NOT PROPOSING TO PREJUDGE THE POLITICAL DECISION WHICH WOULD HAVE TO BE MADE IN AN EMERGENCY; WE ARE ONLY SEEKING TO CLEAR AWAY LEGAL OBSTACLES TO THE POSSIBLE USE OF GSG-9.

4. AS AN EXAMPLE IN SUPPORT OF THIS SUGGESTION, IT
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MIGHT BE USEFUL TO DETERMINE WHAT DIFFERENCES THERE ARE BETWEEN THE SPEZIAL EINSATZ KOMMANDO (SPECIAL OPERATIONS COMMAND; SEK), WHICH IS PART OF THE BERLIN POLICE AND WHICH USBER ESTIMATES IS GENERALLY AS CAPABLE AS THE GSG-9 IN TERMS OF DEALING WITH A HIJACKING (USBER 307) THERE MAY OF COURSE BE DISTINCTIONS BETWEEN THE CAPABILITIES OF THE SEK AND THE GSG-9 WHICH MAKE THE FORMER NON-MILITARY AND THE LATTER PARAMILITARY, BUT WE DO NOT KNOW WHAT THEY ARE.

5. OUR SUGGESTION FOR A LEGAL STUDY HAS THUS A TACTICAL AND A FACTUAL BASIS. ON THE TACTICAL SIDE, WE BELIEVE THIS IS A WAY TO GET UK AGREEMENT TO WORK TOWARD THE RESOLUTION OF WHAT COULD BE A SERIOUS PROBLEM. ON THE FACTUAL SIDE, IT WOULD BE USEFUL TO TEST THE ASSUMPTIONS WHICH HAVE BEEN MADE ABOUT THE BGS AND TO GROUND THESE ON A FACTUAL BASIS.

6. IF THE DEPARTMENT CONCURS, WE WILL SUGGEST TO THE BRITISH AND FRENCH IN THE BONN GROUP THAT SUCH A STUDY SHOULD BE UNDERTAKEN.
STOESSEL

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